

**DECISION of the FEI TRIBUNAL  
dated 19 March 2020**

**Banned Substance Case:** 2018/BS24

**Horse/Passport:** ORIENT AKHMIN /104WR20/UAE

**Person Responsible/ID/NF:** Adel Mohd Ali AL HOUSANI /10055482/UAE

**Trainer/ID/NF:** Adel Mohd Ali AL HOUSANI /10055482/UAE

**Event/ID:** CEI1\* 80 - Abu Dhabi, Al Wathba (UAE)/2018\_CI\_1881\_E\_S\_01\_01

**Date of Event:** 27.10.2018

**Prohibited Substance(s):** Testosterone

**I. COMPOSITION OF PANEL**

Mr. Cesar Torrente (COL), one member panel

**II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** none.

**III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Adel Mohd Ali Al Housani.

**3. Justification for sanction:**

**GRs Art. 143.1:** "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

**EAD Rules Art. 2.1.1:** "It is each Person Responsible's personal duty to ensure that no Banned Substance is present in the Horse's body. Persons Responsible are responsible for any Banned Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1."

**EAD Rules Art. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs."

## IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in its decision.

### 1. Factual Background

- 1.1 ORIENT AKHMIN (the "**Horse**") participated at the CEI1\* 80 in Abu Dhabi, Al Wathba, in the United Arab Emirates (UAE), on 27 October 2018 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Adel Mohd Ali Al Housani, who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**"). Furthermore, the PR was also the registered trainer for the Horse at the time of the Event.
- 1.2 The Horse was selected for sampling during the Event on 27 October 2018. The sample was divided into an A-sample and B-sample.
- 1.3 The FEI-approved Laboratory, The Hong Kong Jockey Club, in Hong Kong (the "**Laboratory**") analysed the Horse's urine and blood sample number 5575104 (the "**A-sample**") and reported an adverse analytical finding of Testosterone, in both the urine and the blood sample.
- 1.4 Testosterone is an anabolic steroid with anabolic effects. The concentration in urine was determined to be 0.121 mg/mL which exceeds the international threshold for testosterone in urine for geldings (such as the Horse in the present case) which is 0.020 mg/mL. The concentration in blood was determined to be 131 pg/mL which exceeds the international threshold for testosterone in blood for geldings which is 100 pg/mL. Testosterone – provided it is detected in a gelding's Sample at a level above the thresholds (is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). The positive finding for this substance in the A-sample gives rise to an EAD Rule violation under the EADCMRs.

### 2. The Further Proceedings

- 2.1 On 13 November 2018, the FEI Legal Department officially notified the PR, through the National Federation of the UAE ("**UAE-NF**"), of the presence of the Prohibited Substance, the rule violation and the potential consequences (the "**Notification Letter**"). The Notification Letter included notice that the PR was provisionally suspended and granted him

the opportunity to be heard at a Preliminary Hearing before the Tribunal.

- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 13 November 2018, until 12 January 2019. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

### **3. The B-Sample analysis**

- 3.1 The PR and the Owner of the Horse were informed that they were entitled to request an analysis of the B-sample in the Notification Letter. They did not request for the confirmatory analysis to be conducted. Neither did they challenge the analysis results of the A-sample.

### **4. Written submission by and on behalf of the PR**

- 4.1 The PR chose not to submit any explanations for the positive finding.

### **5. Written Response by the FEI**

- 5.1 On 6 March 2020, the FEI provided its Response in this case.
- 5.2 The FEI submitted that:
  - a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.
  - b) The elements of an Article 2.1 violation are straightforward. "*It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1*". Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event confirmed the presence of Testosterone and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of Testosterone in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
  - c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the

EADM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless he is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.

- d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substances in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the Testosterone has entered the Horse's system. In this case, the PR has not provided any information on how the substance could have entered the Horse' system. The threshold requirement for proving how the substance entered the Horse's system has, therefore, not been fulfilled.
- e) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse.
- f) Since the PR has not established how the Prohibited Substances entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the PR.
- g) The FEI respectfully requested that the Tribunal issue a decision:
  - (i) *upholding the charge that the PR violated Article 2.1 of the EAD Rules;*
  - (ii) *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;*
  - (iii) *imposing a period of Ineligibility of two (2) years on the PR, commencing from 13 November 2018 (the date upon which the Provisional Suspension was imposed);*
  - (iv) *fining the PR in the amount of 7 500 CHF; and*
  - (v) *ordering the PR to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.*

## **6. Further proceedings**

- 6.1 On 6 March 2020, the FEI submitted the case file to the Tribunal for adjudication of the present case.
- 6.2 On 9 March 2020, the FEI Tribunal Deputy chair nominated a one member panel for the case at hand, and granted the PR with another opportunity to provide his explanations for the positive finding. Furthermore, the Tribunal granted the Parties with the opportunity to request a final hearing. The PR however did not provide any explanations for the positive finding, and neither party requested for a hearing to be held.

## **7. Jurisdiction**

- 7.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs and Article 18 of the IRs.

## **8. The Person Responsible**

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the Horse's rider at the Event. The Tribunal notes that the PR was in addition also registered as the trainer for the Horse at the time of the Event.

## **9. The Decision**

- 9.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Testosterone in the urine and blood samples taken from the Horse at the Event. The PR did not challenge the accuracy of the test results and the positive finding. Testosterone is a Banned Substance under the FEI Equine Prohibited Substances List and the presence of the Testosterone – above the threshold - in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 9.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.

- 9.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 9.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.
- 9.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 9.6 In this case the Tribunal finds that the PR has decided to remain silent and has not provided any explanations with regard to the positive finding, nor argued anything in its favour. As a consequence, the Tribunal notes that the PR does not claim the applicability of any articles of the EAD Rules in his favour nor has he established - on a balance of probability, as required under Article 3.1 of the EAD Rules - how the Prohibited Substance entered the Horse's system.
- 9.7 In the absence of establishing on the balance of the probability how the Prohibited Substance entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the rule violation.
- 9.8 Even if the source of the Prohibited Substance was established, the Tribunal would still conclude that No (Significant) Fault or Negligence does not apply in this case because under Article 2.1.1 of the EAD Rules, it is the PR's personal duty to ensure that no Banned Substance is present in the Horse at any time.
- 9.9 From the foregoing, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.
- 9.10 The Tribunal takes note that the PR has been provisionally suspended since 13 November 2018, and the Tribunal understands that the PR did not compete during the period of the Provisional Suspension; at least the Tribunal has not been provided with information otherwise.

9.11 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

## **10. Disqualification**

10.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

## **11. Sanctions**

11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.

11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

1) The PR shall be suspended for a period of **two (2) years**, the period of Provisional Suspension, effective from 13 November 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 12 November 2020**.

2) The PR is fined **seven thousand five hundred Swiss Francs (CHF 7,500)**.

3) The PR shall contribute **two thousand Swiss Francs (CHF 2,000)** towards the costs of these proceedings.

11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

11.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall

be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

- 11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 11.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**



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**Mr. Cesar Torrente, one member panel**